

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**DERRICK A. MILBOURNE,
on is own behalf and on behalf
of those similarly situated,**

Plaintiff

v.

CIVIL ACTION NO. 3:12cv861

JRK RESIDENTIAL AMERICA, LLC.

Defendant

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF CONSENT MOTION FOR
APPROVAL OF CLASS NOTICE**

Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Derrick A. Milbourne, individually and on behalf of those similarly situated, with the consent of the Defendant, has moved the Court for an Order approving the form and manner of the proposed Class Notice filed as exhibits hereto. The proposed notice and the plan for providing notice to the class are the best notice practicable under the standard set forth in Fed. R. Civ. P. 23.

The Parties have agreed to the language in the Proposed Notice, which apprises the class members of the facts of the case, the Court's Order certifying the class, and the instructions for opting-out of the class.

The following notice plan has been agreed by the parties:

1. Defendant shall provide the Class List as an excel spreadsheet with updated mailing addresses to Class Counsel within 5 days of entry of an Order Approving the Form and Manner of Class Notice. These addresses will reflect the most recent addresses in JRK Residential America's records.

2. Class Counsel shall send, via U.S. first class mail, the approved notices to Class Members within 15 days after receiving the updated Class List. Class Counsel shall re-mail any notices returned with forwarding addresses within the notice period.

3. Any Class Member who desires to be excluded from the class must send a written request for exclusion to Class Counsel by a date certain, which date will be no sooner than 30 days after the date on which the Class Counsel first mailed the Class Notices. The date that the notices are first mailed and the deadline for exclusions cannot be set until the Court rules on the Class Notice and plan. Class Counsel shall timely forward notice of any requests for exclusion to counsel for JRK Residential America as they are received. Class Counsel shall also provide a list of the names of each Class Member who submitted a timely exclusion to counsel for JRK Residential America after the exclusion deadline passes. The names of the individuals opting out of the class action will be filed with the Court within 15 days after the deadline for mailing a written exclusion has passed.

4. Plaintiff will bear the costs of providing notice.

The form and manner of the proposed notice and plan for informing class members of the case are not only adequate, but the best notice practicable. “Adequate notice is critical to court approval of a class settlement under Rule 23(e).” *Hanlon*, 150 F.3d at 1025. Pursuant to Fed. R. Civ. P. 23(c)(2)(B), “[t]he notice [for Fed. R. Civ. P. 23(b)(3) classes] must concisely and clearly state in plain, easily understood language: the nature of the action[;] the definition of the class certified[;] the class claims, issues, or defenses[;] that a class member may enter an appearance through counsel if the member so desires[;] that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded[;] and the binding effect of a class judgment on class members under Rule 23(c)(3).” Pursuant to Rule 23(e)(1)(B), “[t]he court must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement....”

Individual notice is being provided by first class U.S. mail to each Class Member. Before

sending the written notice, JRK Residential America, LLC will generate a class list with updated addresses for the Class Members to ensure the last known addresses for each Class Member is used. The proposed notice is appropriate and complies with both Fed. R. Civ. P. 23(c)(2)(B) and (e)(1)(B). The notice contains all of the required Rule 23 information and properly advises the Class Members of their rights. Additionally, Class Counsel will maintain a publicly available website that will (1) enable Class Members to access and download the relevant pleadings, Class Notice and other pertinent information such as deadlines and contact information; (2) enable Class Members to download an exclusion form; (3) provide relevant updates and information with respect to the litigation. The proposed method for notifying the Class Members thus satisfies both Rule 23 and due process and constitutes the best notice practicable under the circumstances.

Respectfully, the Plaintiff, on behalf of the class, moves the court for entry of an Order approving the form and manner of notifying the class of certification and the litigation of this matter.

Respectfully submitted,

DERRICK A. MILBOURNE,
*For himself and on behalf of all
similarly situated individuals,*

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of February, 2015, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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